

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 4-14 and 16-24 are pending in this application. The amendments to claims 8 and 22 are presented to provide consistency with paragraphs [0014] and [0022] of the publication of this application, i.e. U.S. Patent Application Publication 2006-0016905. In order to simplify matters for appeal, claims 16 and 17 have been cancelled. Claim 21 has been amended to indicate the web material is a fiber material. New claim 24 has been added to describe the relationship between the first control element and layer of material impermeable to the volatile substances; this element is supported throughout the specification, e.g. Figure 1. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

III. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1, 4-14 and 16-23 were rejected as allegedly being obvious by Fischel-Ghodsian (US 5,071,704 -“Fischel”). The previous rejection over Paul (U.S. Patent 5,556,030) has been withdrawn in favor of Fischel, but like Paul, the Fischel reference does not teach all elements of the applicants’ claimed dispenser for controlled release and therefore, does not render the applicants’ claims to be obvious. Specifically, Fischel does not describe the applicants’ second control element.

Fischel’s self-described decorative layer (50) is referred to in the Office Action as being a “control element”, but when considering the Fischel reference as a whole, one of ordinary skill in the art would not view the decorative layer as being equivalent to the applicants’ control element.

The applicants’ control element further requires: (1) control over the release rate of said at least one volatile substance by controlling the size of the surface of the first control element

independent of the physical properties of the at least one volatile substance and the material properties of said permeable material of the first control element; (2) that the second control element is in the form of a film that possesses gaps wherein the number of said gaps is from 500 to 8000 gaps per m² of said film; and (3) that the first control element and the second control element jointly control release of the at least one volatile substance from the reservoir.

As is inherent in the description of layer (50) as being a “decorative layer”, this layer is an optional element of Fischel’s invention and the key elements for effecting the controlled release of vapors and scents in Fischel is described as being the combination of X2 (reservoir layer), X4 (diffusion rate limiting membrane layer) and X6 (impermeable backing), where X is an integer from 1-4 (see Figures 1-4 of Fischel).

What little guidance Fischel does provide to one of ordinary skill in the art for the decorative layer is that the layer “comprises of a thin highly porous material or polyester base which *freely allows* the released vapors to diffuse from one surface to the other surface and into the surrounding environment.” (see col. 8, lines 52-56 (emphasis added)).

Therefore, there is no control effected by this decorative layer in addition to the level of control afforded by Fischel’s diffusion rate limiting membrane layer (X4), i.e. Fischel’s decorative layer fails to explicitly meet elements (1) and (3) described above. Moreover, contrary to the assertion of obviousness with regard to the amount of gaps (2) being a mere design choice, the teaching of Fischel that the active substance is allowed to freely flow is *prima facie* evidence that Fischel does not meet the element of having number of said gaps is from 500 to 8000 gaps per m² of said film, i.e. this is the number of gaps to control diffusion whereas Fischel does NOT want to control diffusion.

For the reasons cited above, the applicants’ claimed dispenser is unobvious over Fischel because all elements of the applicants’ claimed invention have not been taught by Fischel.

(As claim 24 was not before the Examiner at the time of the previous Office Action, the applicants’ note that this additional element was also not described by Fischel, i.e. Fischel’s diffusion rate limiting membrane layer (X4) never comes in contact with their impermeable backing layer (X6))

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: /Howard C. Lee/
Marilyn M. Brogan Howard C. Lee
Reg. No. 31,223 Reg. No. 48,104
Telephone: (212) 588-0800
Facsimile: (212) 588-0500